

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Murillo v. Smith

Murillo · No. 25-cv-00230-JST · Decided July 8, 2025

OPINION

Murillo v. Smith

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 JOAQUIN DANIEL MURILLO, Case No. 25-cv-00230-JST 8 Plaintiff,

ORDER OF PARTIAL SERVICE

v. 9 10 STEPHEN SMITH, et al., Defendants. 11 12 13 Plaintiff, an inmate currently housed at Pelican Bay State Prison (“PBSP”) in Soledad, 14 California, has filed a pro se action pursuant to 42 U.S.C. § 1983. In this order, the Court screens 15 Plaintiff’s complaint (ECF No. 1) pursuant to 28 U.S.C. § 1915A. Plaintiff has been granted leave 16 to proceed in forma pauperis in a separate order.

17 DISCUSSION

18 A. Standard of Review 19 A federal court must conduct a preliminary screening in any case in which a prisoner seeks 20 redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. 21 § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims 22 that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek 23 monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), 24 (2). Pro se pleadings must, however, be liberally construed. See *United States v. Qazi*, 975 F.3d 25 989, 993 (9th Cir. 2020). 26 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the 27 claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Specific facts are not 1 grounds upon which it rests.” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). 2 While Rule 8 does not require detailed factual allegations, it demands more than an unadorned, 3 the-defendant-unlawfully-harmed-me accusation. *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). 4 A pleading that offers only labels and conclusions, or a formulaic recitation of the elements of a 5 cause of action, or naked assertions devoid of further factual enhancement does not suffice. *Id.* 6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) 7 that a right secured by the Constitution or laws of the United States was violated, and (2) that the 8 alleged violation was committed by a person acting under the color of state law. See *West v. 9 Atkins*, 487

U.S. 42, 48 (1988). 10 B. Complaint 11 The complaint names as defendants the following current or former Pelican Bay State 12 Prison (“PBSP”) officials: Warden Stephen Smith, Community Resource Manager Robert 13 Lassaco, former warden Jim Robertson, former associate warden Barneburg, K. Love, and J. 14 Moeckly. The complaint makes the following allegations. Plaintiff is Muslim, but defendants 15 Smith, Lassaco, Robertson, and Barneburg have limited his ability to practice his religion by 16 failing to hire an imam and making no significant efforts to do so; failing to ensure that Muslim 17 services are provided regularly, much less every Friday as required; failing to provide a Halal diet; 18 failing to provide the traditional foods to break the fast during Ramadan; denying requests for 19 Muslim religious events, meals; refusing donations from outside organizations; and not allowing 20 presentations from outside visitors. In contrast, PBSP officials favor inmates practicing the 21 Christian faith. PBSP has recently hired a Protestant chaplain; allows outside Christian 22 organizations to freely donate items such as Bibles and furniture to the prison chapel; allows the 23 Christian groups to hold religious events; and allows outside visitors to come do activities to teach 24 the Christian inmates. See generally ECF No. 1. 25 Liberally construed, the complaint alleges a cognizable First Amendment free exercise 26 claim and a cognizable Equal Protection Claim against defendants PBSP Warden Stephen Smith, 27 Community Resource Manager Robert Lassaco, former warden Jim Robertson, and former 1 prisoner to establish free exercise violation, he must show that prison regulation or official 2 burdened practice of religion without any justification reasonably related to legitimate penological 3 interests); *Engquist v. Oregon Dep’t of Agr.*, 553 U.S. 591, 601 (2008) (allegation of being 4 intentionally treated differently from others similarly situated without rational basis for difference 5 in treatment states cognizable equal protection claim). 6 The complaint fails to state a claim against defendants J. Moeckly or K. Love. 7 Although defendant Moeckly is named as a defendant, there are no specific allegations in 8 the body of the complaint about defendant Moeckly. Section 1983 liability may be imposed on a 9 defendant only if the plaintiff can show that the defendant proximately caused the deprivation of a 10 federally protected right. See *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988). While Fed. R. 11 Civ. P. 8 does not require detailed factual allegations, Plaintiff should not refer to defendants as a 12 group and should specify what each defendant did or did not do that violated his federal 13 constitutional rights. The Court DISMISSES defendant Moeckly from this action with leave to 14 amend. See *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (district court should grant leave 15 to amend unless pleading could not possibly be cured by the allegation of other facts). If Plaintiff 16 chooses to file an amended complaint naming defendant Moeckly as a defendant, he must specify 17 what defendant Moeckly did or did not do that violated his federal constitutional rights. 18 Defendant Love’s involvement in the relevant events arise from her review of Plaintiff’s 19 grievance. A prison official’s denial of an inmate’s grievance generally does not constitute 20 significant participation in an alleged constitutional violation sufficient to give rise to personal 21 liability under Section 1983. See, e.g., *Wilson v. Woodford*, No. 1:05-cv-00560-OWW-SMS, 22 2009 WL 839921, at

*6 (E.D. Cal. Mar. 30, 2009) (ruling against prisoner on administrative 23 complaint does not cause or contribute to constitutional violation). A prisoner has no 24 constitutional right to an effective grievance or appeal procedure. See *Ramirez v. Galaza*, 334 25 F.3d 850, 860 (9th Cir. 2003) (holding that prisoner has no constitutional right to effective 26 grievance or appeal procedure); *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988) (“There is no 27 legitimate claim of entitlement to a grievance procedure.”). The Court DISMISSES defendant 1 BMG Music Pub., 512 F.3d 522, 532 (9th Cir. 2008) (futility of amendment is basis for denial of 2 leave to amend).

3 CONCLUSION

4 For the reasons set forth above, the Court orders as follows. 5 1. The following defendant(s) shall be served: Pelican Bay State Prison Warden 6 Stephen Smith, Pelican Bay State Prison Community Resource Manager Robert Lassaco, former 7 Pelican Bay State Prison warden Jim Robertson, and former Pelican Bay State Prison associate 8 warden Barneburg. 9 2. Service on the listed defendant(s) shall proceed under the California Department of 10 Corrections and Rehabilitation’s (“CDCR”) e-service program for civil rights cases from prisoners 11 in the CDCR’s custody. In accordance with the program, the Clerk is directed to serve on the 12 CDCR via email the following documents: the operative complaint (ECF No. 1), this order of 13 service, a CDCR Report of E-Service Waiver form and a summons. The Clerk also shall serve a 14 copy of this order on the Plaintiff. 15 No later than 40 days after service of this order via email on the CDCR, the CDCR shall 16 provide the court a completed CDCR Report of E-Service Waiver advising the court which 17 defendant(s) listed in this order will be waiving service of process without the need for service by 18 the United States Marshal Service (“USMS”) and which defendant(s) decline to waive service or 19 could not be reached. The CDCR also shall provide a copy of the CDCR Report of E-Service 20 Waiver to the California Attorney General’s Office which, within 21 days, shall file with the Court 21 a waiver of service of process for the defendant(s) who are waiving service. 22 Upon receipt of the CDCR Report of E-Service Waiver, the Clerk shall prepare for each 23 defendant who has not waived service according to the CDCR Report of E-Service Waiver a 24 USM-205 Form. The Clerk shall provide to the USMS the completed USM-205 forms and copies 25 of this order, the summons, and the operative complaint for service upon each defendant who has 26 not waived service. The Clerk also shall provide to the USMS a copy of the CDCR Report of E- 27 Service Waiver. 1 4. The Court DISMISSES defendant J. Moeckly from this action with leave to amend. 2 If Plaintiff wishes to file an amended complaint that repleads his claims against defendant J. 3 Moeckly and addresses the deficiencies identified above, he shall file an amended complaint 4 within twenty-eight (28) days of the date of this order. The amended complaint must include the 5 caption and civil case number used in this order, Case No. C 25-00230 JST (PR) and the words 6 “AMENDED COMPLAINT” on the first page. If using the court’s form complaint, Plaintiff must 7 answer all the questions on the form in order for the action to proceed. An amended complaint 8 completely replaces the previous complaints. See *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 925 9 (9th Cir. 2012).

Accordingly, Plaintiff must include in his amended complaint all the claims he 10 wishes to present and all of the defendants he wishes to sue, including the defendant(s) served 11 above and the claim(s) found cognizable below. Plaintiff may not incorporate material from the 12 prior complaints by reference. Failure to file an amended complaint in accordance with this order 13 in the time provided will result in ECF No. 1 remaining the operative complaint and this action 14 proceeding solely against the defendant(s) ordered served above, on the claim(s) found cognizable 15 below. The Clerk shall include two copies of the court's complaint form with a copy of this order 16 to Plaintiff. 17 5. As detailed above, the complaint states a cognizable First Amendment free exercise 18 claim and a cognizable Equal Protection Claim against defendants warden Stephen Smith, 19 community resource manager Robert Lassaco, former warden Jim Robertson, and former associate 20 warden Barneburg. 21 6. In order to expedite the resolution of this case, the Court orders as follows: 22 a. No later than 91 days from the date this order is filed, Defendants must file 23 and serve a motion for summary judgment or other dispositive motion. If Defendants are of the 24 opinion that this case cannot be resolved by summary judgment, Defendants must so inform the 25 Court prior to the date the motion is due. A motion for summary judgment also must be 26 accompanied by a Rand notice so that Plaintiff will have fair, timely, and adequate notice of what 27 is required of him in order to oppose the motion. *Woods v. Carey*, 684 F.3d 934, 939 (9th Cir. 1 served concurrently with motion for summary judgment).1 2 b. Plaintiff's opposition to the summary judgment or other dispositive motion 3 must be filed with the Court and served upon Defendants no later than 28 days from the date the 4 motion is filed. Plaintiff must bear in mind the notice and warning regarding summary judgment 5 provided later in this order as he prepares his opposition to any motion for summary judgment. 6 Defendants shall file a reply brief no later than 14 days after the date the opposition is filed. The 7 motion shall be deemed submitted as of the date the reply brief is due. No hearing will be held on 8 the motion. 9 7. Plaintiff is advised that a motion for summary judgment under Rule 56 of the 10 Federal Rules of Civil Procedure will, if granted, end your case. Rule 56 tells you what you must 11 do in order to oppose a motion for summary judgment. Generally, summary judgment must be 12 granted when there is no genuine issue of material fact – that is, if there is no real dispute about 13 any fact that would affect the result of your case, the party who asked for summary judgment is 14 entitled to judgment as a matter of law, which will end your case. When a party you are suing 15 makes a motion for summary judgment that is properly supported by declarations (or other sworn 16 testimony), you cannot simply rely on what your complaint says. Instead, you must set out 17 specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, 18 as provided in Rule 56(c), that contradict the facts shown in the defendants' declarations and 19 documents and show that there is a genuine issue of material fact for trial. If you do not submit 20 your own evidence in opposition, summary judgment, if appropriate, may be entered against you. 21 If summary judgment is granted, your case will be dismissed and there will be no trial. *Rand v. Rowland*, 154 F.3d 952, 962–63 (9th Cir. 1998) (en banc) (App. A).

(The Rand notice above does 23 not excuse Defendants' obligation to serve said notice again concurrently with a motion for 24 summary judgment. Woods, 684 F.3d at 939). 25 1 If Defendants assert that Plaintiff failed to exhaust his available administrative remedies as 26 required by 42 U.S.C. § 1997e(a), Defendant(s) must raise such argument in a motion for summary judgment, pursuant to the Ninth Circuit's opinion in Albino v. Baca, 747 F.3d 1162 (9th 27 Cir. 2014) (en banc) (overruling Wyatt v. Terhune, 315 F.3d 1108, 1119 (9th Cir. 2003), which 1 8. All communications by Plaintiff with the Court must be served on Defendants' 2 || counsel by mailing a true copy of the document to Defendants' counsel. The Court may disregard 3 any document which a party files but fails to send a copy of to his opponent. Until Defendants' 4 || counsel has been designated, Plaintiff may mail a true copy of the document directly to 5 Defendants but once Defendants are represented by counsel, all documents must be mailed to 6 || counsel rather than directly to Defendants. 7 9. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. 8 No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16 is required 9 || before the parties may conduct discovery. 10 10. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep the 11 Court informed of any change of address and must comply with the Court's orders in a timely 12 || fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant 5 13 || to Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of change of address in every 14 || pending case every time he is moved to a new facility. 15 11. Any motion for an extension of time must be filed no later than the deadline sought 16 || to be extended and must be accompanied by a showing of good cause. Plaintiff is cautioned that 3 17 he must include the case name and case number for this case on any document he submits to the S 18 || Court for consideration in this case. 19 IT IS SO ORDERED. 20 Dated: July 8, 2025 .

71 JON S. TIGAR

22 nited States District Judge 23 24 25 26 27 28